

*FCC Received June 6, 1994 @ 12:50 p.m.  
Dena A. Bradshaw*

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TRANSCRIPT OF PROCEEDINGS

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In Re Applications of: MM DOCKET NO. 94-27  
CUMBERLAND COMMUNITIES  
COMMUNICATIONS CORPORATION  
Pioneer, Tennessee  
THE MOODY BIBLE INSTITUTE OF CHICAGO  
Crossville, Tennessee

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

DATE OF CONFERENCE: May 24, 1994 VOLUME: 1  
PLACE OF CONFERENCE: Washington, D.C. PAGE: 1-11

FREE STATE REPORTING, INC.  
Court Reporting Depositions  
D.C. Area (301) 261-1902  
Balt. & Annap. (410) 974-0947

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FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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CUMBERLAND COMMUNITIES )  
COMMUNICATIONS CORPORATION )  
Pioneer, Tennessee )

MM DOCKET NO. 94-27

THE MOODY BIBLE INSTITUTE OF CHICAGO )  
Crossville, Tennessee )  
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The above-entitled matter came on for conference pursuant to Notice before Judge Sippel, Administrative Law Judge, at 2000 L Street, N.W., Washington, D.C. in Courtroom No. 1 on Tuesday, May 24, 1994 at 9:00 a.m.

**APPEARANCES:**

**On Behalf of Cumberland Communities:**

AARON SHAINIS, Esquire  
Shainis & Peltzman  
1255 23rd Street, N.W.  
Washington, D.C. 20037

**On Behalf of The Moody Bible Institute:**

JEFF SOUTHMAYD, Esquire  
Southmayd and Miller  
1233 20th Street, N.W.  
Washington, D.C. 20036

**On Behalf of Chief, Mass Media Bureau:**

PAULETTE LADEN, Esquire  
2025 M Street, N.W.  
Suite 7212  
Washington, D.C. 20554

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25	Conference Began: 9:00 a.m.	Conference Ended: 9:15 a.m.

1 P R O C E E D I N G

2 JUDGE SIPPEL: We can go right on the record. This  
3 is our prehearing conference in the Tennessee, two Tennessee  
4 communities, Pioneer and Crossville. I'd like the -- first  
5 take the appearances. On behalf of the Bureau?

6 MS. LADEN: Paulette Laden.

7 JUDGE SIPPEL: And on -- let's take the parties in  
8 docket order, on behalf of Cumberland Communities?

9 MR. SHAINIS: Your Honor, the counsel of record is  
10 Robert Stone, I am filling in for Mr. Stone this morning, my  
11 name is Aaron Shainis.

12 JUDGE SIPPEL: Okay, Mr. Shainis. Mr. Stone's  
13 offices -- our notice is -- I notice from the -- his notice of  
14 appearance, his offices are in Tennessee.

15 MR. SHAINIS: That is correct.

16 JUDGE SIPPEL: And on behalf of Moody Bible?

17 MR. SOUTHMAYD: Good morning, Your Honor.  
18 Jeff Southmayd, Southmayd and Miller.

19 JUDGE SIPPEL: Mr. Southmayd, good morning. I have  
20 received -- I'm going to go down a checklist of items. Proofs  
21 of publication, Moody's came in the other day, what's, what is  
22 the status with respect to Cumberland?

23 MR. SHAINIS: Your Honor, I've been advised that, if  
24 that has not been taken care of, it will be. Mr. Stone  
25 believes it has been taken care of but he will check on that

1 -- what he advised me was, if it had not been taken care of,  
2 he would see that it was done immediately, and if it has been  
3 he will see that the proper notification is filed.

4 JUDGE SIPPEL: All right. I'm going to require -- I  
5 want a status report by June 3rd as to, of course whether  
6 it's, if it's done by June 3rd then that's no -- nothing more  
7 need be said, but if it's not completed by June 3rd I want a  
8 statement from him and a status report as to when this will be  
9 completed. All right. There is a provision in my pre-hearing  
10 conference order for counsel to have met on the 17th of May  
11 and to have filed a joint report on the 20th of May. I  
12 haven't seen a joint report, but maybe I should ask  
13 Mr. Southmayd to address those, I mean, they're related  
14 issues, a meeting before and then the status report.

15 MR. SOUTHMAYD: A meeting was held with Mr. Stone on  
16 the telephone on May 17th. An agreement was reached in  
17 settling the case, removing the mutual exclusivity between the  
18 two applications thereby allowing both applications, as  
19 amended, to be approved. And on May 20, I filed, and I  
20 apologize if Your Honor's not received a copy, I understand  
21 counsel for Mass Media Bureau just received a copy this  
22 morning --

23 MS. LADEN: That's correct.

24 MR. SOUTHMAYD: On May 20 we filed a letter  
25 outlining the parameters of the settlement and attached the

1 preliminary engineering statement that we believe demonstrates  
2 that what we're proposing to do to remove the mutual  
3 exclusivity will in fact work. If Your Honor is interested,  
4 basically the Pioneer application will be amended to specify a  
5 directional antenna system that will remove the mutual  
6 exclusivity between it and Moody's application and open the  
7 door for the approval of both applications. The two  
8 applicants will split the cost of preparing that engineering  
9 amendment as part of the settlement and there will be no other  
10 consideration involved in the settlement. Both parties are  
11 non-profit entities and so we were attempting in terms of the  
12 settlement to limit the costs that would be paid. And the  
13 engineer for Cumberland Communities put in a lower bid than  
14 Moody's engineer to prepare the engineering so the parties  
15 were interested in pursuing his bid. Unfortunately, he's in  
16 Europe until June 10th and is not in a position to prepare the  
17 engineering amendment to the Cumberland application until his  
18 return. Subsequently, yesterday afternoon, Moody's engineer  
19 reviewed his bid and agreed to do the engineering for the same  
20 price that Cumberland's engineer proposed to do it. And I've  
21 not had the opportunity to discuss this with Mr. Stone at this  
22 point but I guess it's possible and I guess counsel here  
23 present wasn't familiar with that fact, that we would be able  
24 to get the engineering amendment in sooner than had been  
25 anticipated in my letter.

1 JUDGE SIPPEL: All right. Well it's, obviously it's  
2 in everybody's interest that you submit it as soon as  
3 possible. I take it since all this is happening so close to  
4 today that the Bureau hasn't had an opportunity at all to  
5 react to this proposal.

6 MS. LADEN: No, Your Honor, we were aware that the  
7 parties -- Mr. Southmayd had made the Bureau aware that the  
8 parties were pursuing this type of proposal to remove the  
9 mutual exclusivity but this is the first time we've seen any  
10 engineering. Our engineer hasn't seen it yet and in any event  
11 this is not what we -- would be included in an amendment. So,  
12 I'm going to give this to the engineer so he can take a  
13 preliminary look but we'll have to process -- it will be like  
14 processing a new application, basically. And he will have to  
15 process that in connection with the amendment. We were  
16 talking this morning. I think we are going to work out  
17 something where the parties will make a preliminary copy of  
18 their amendment available to the Bureau's engineers so that we  
19 can iron out any problems before it gets filed. The usual  
20 filing deadline for an amendment, four days plus three mailing  
21 days, is usually not enough to process an amendment like this  
22 so it sometimes helps to get a preliminary look at it and then  
23 we also have the advantage of working out any differences in  
24 advance.

25 JUDGE SIPPEL: Well that sounds like an excellent

1 way to do it. But I tell you, you say it's like a new  
2 application, this doesn't mean that it's going to go back in  
3 line with all the other applications --

4 MS. LADEN: No.

5 JUDGE SIPPEL: -- I mean, this will be treated as a  
6 unique --

7 MS. LADEN: No, it will be treated like an amendment  
8 for all procedural purposes. It's -- from the engineering  
9 standpoint, from the processing standpoint, as far as doing  
10 the engineering, it's an entirely new proposal.

11 JUDGE SIPPEL: I see.

12 MS. LADEN: It's only the engineering portion that's  
13 being amended, however, so.

14 JUDGE SIPPEL: All right. Well this is, this is a  
15 development that's obviously going to require putting this  
16 case on hold until we can have the -- until the Bureau has an  
17 opportunity to address the technicalities of what you're going  
18 to submit. So I will stay all further discovery in this case  
19 and I will also stay all of the dates in this case. I'm not,  
20 I'm not going to set alternate dates or new dates, I'm  
21 assuming this is going to go through as you've outlined it.  
22 But I am going to require that in 30 days that I get a joint  
23 status report from the applicant parties and with a  
24 representation that it's -- that the report has been seen by  
25 Bureau counsel before you file it. And that would make that



1 date -- well it's on a Friday the 24th. We'll make it June  
2 the 27th.

3 MR. SHAINIS: Your Honor?

4 JUDGE SIPPEL: Yes, Mr. Shainis?

5 MR. SHAINIS: I'm assuming the joint status report  
6 would be obviated if the settlement papers were filed prior to  
7 that date.

8 JUDGE SIPPEL: Oh, absolutely. I'm assuming, when I  
9 say, I'm assuming that it would be a situation where things  
10 have been filed but there's been no firm settlement. I tell  
11 you, you're not going to be able to file a settlement  
12 agreement until you've got some assurance that there's going  
13 to be clearance obtained from the Bureau.

14 MR. SOUTHMAYD: Your Honor, I think what was  
15 anticipated is preliminarily drafting a settlement agreement  
16 conditioned on, obviously the engineering being acceptable. I  
17 think we anticipated moving ahead and striking a settlement  
18 deal but having it subject to the amendment being accepted and  
19 both applications being granted.

20 JUDGE SIPPEL: All right.

21 MR. SOUTHMAYD: I don't see any reason not to strike  
22 the deal contingent on the engineering not washing.

23 MS. LADEN: We can talk about it. The problem is we  
24 would have to take a position on the settlement without having  
25 the benefit of knowing whether the engineering is workable or

1 not and that would be difficult. I mean, from our standpoint,  
2 as far as responding to the settlement. But that's something  
3 that we can work out, I mean, we can, we may be able to look  
4 at the engineering before you actually file your settlement  
5 papers or we may file comments indicating that we're still  
6 looking at the engineering.

7 JUDGE SIPPEL: If there is -- if you do go that  
8 route and you do file settlement with an amendment -- the  
9 proposed amendment, there'd be no action taken by me on that  
10 settlement anyway until the Bureau had finalized it's -- I  
11 would not require the Bureau to even comment on the settlement  
12 until after they've had an opportunity to full address the  
13 engineering. So it's, you know, you can pick and choose how  
14 you want to proceed on this. All I want to be sure is that by  
15 June 27th I have an understanding either by virtue of final  
16 filings or that I know what's going on here. Mr. Shainis do  
17 you --

18 MR. SHAINIS: Your Honor, one other item --  
19 obviously the parties will endeavor to give the Bureau an  
20 advance copy of the engineering, but if the Bureau also needs  
21 additional time, I'm sure as far as Cumberland is -- as far as  
22 Mr. Southmayd also, we would not object to the Bureau having  
23 additional time to file it's comments.

24 JUDGE SIPPEL: Absolutely not. All right. Well as  
25 I say, you work those things out with yourselves informally

1 and just keep me posted, but I am going to say I'm going to  
2 stay this case for all purposes until June 27th, and that's  
3 going to be a tar-- I mean, I want to know something in a  
4 formal way what's going on unless you already filed your --  
5 you know, if you file your settlement and if it's with the  
6 Bureau and they're indicating, I will -- I'm not going to  
7 require the Bureau to file a motion but I certainly will give  
8 -- I will issue an order giving the Bureau whatever time it  
9 takes, within reason, to do the review of the engineering.  
10 And then of course that would moot the need for filing a joint  
11 report. But I just don't want to leave this open-ended,  
12 totally open-ended and then find out in July that for some  
13 reason or other engineers are still in Europe, or -- but fine,  
14 this is the way, this is the way to resolve it. I mean, this  
15 is the procedure to resolve it. I don't know, I'm not going  
16 to say anything about the merits until we see it all.

17 MS. LADEN: Well if we can grant two applications,  
18 Your Honor, then I think on the merits this is probably a good  
19 way to resolve it also in our view.

20 JUDGE SIPPEL: Well okay, two -- generally speaking,  
21 two are better than one. Let me just point out too that as  
22 the order says, this would be an amendment that a copy has to  
23 be served on the Chief of the Data Management staff. So -- be  
24 sure everybody's kept on board. And that's -- that basically  
25 covers it. I had a long list on discovery but we don't have

1 to spend any time on that, at least not this morning. Is  
2 there anything else anybody has? No? All right then we are  
3 in recess and everybody has the dates and I will await  
4 whatever it is that you'll next file. Thank you very much.

5 MR. SHAINIS: Thank you.

6 MR. SOUTHMAYD: Thank you.

7 MS. LADEN: Thank you, Your Honor.

8 (Whereupon, the conference was adjourned at 9:15 a.m.)  
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**CERTIFICATE OF REPORTER, TRANSCRIBER, AND PROOFREADER**

IN RE APPLICATIONS OF PIONEER, TENNESSEE  
**Name** AND CROSSVILLE, TENNESSEE

MM DOCKET NO. 94-27  
**Docket No.**

WASHINGTON, D.C.  
**Place**

MAY 24, 1994  
**Date**

We, the undersigned, do hereby certify that the foregoing pages, numbers 1 through 11, inclusive, are the true, accurate and complete transcript prepared from the reporting by PAULA McNULTY in attendance at the above identified proceeding, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription Statement of Work and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the proceeding and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the proceeding.

June 3, 1994  
**Date**

Paula R. McNulty  
Paula R. McNulty, Transcriber  
Free State Reporting, Inc.

June 3, 1994  
**Date**

Diane S. Windell  
Diane S. Windell, Proofreader  
Free State Reporting, Inc.

June 3, 1994  
**Date**

Paula R. McNulty  
Paula R. McNulty, Reporter  
Free State Reporting, Inc.

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